1946.

File No. O. Munis.
Bom City /46.
Legal Department
A **BRANCH**

Subject:—

Opinions under the

City of Bombay Municipal

Act, 1888

CP 7 8/(E)

File No. O. Munis. Bom. city /46

Gen. 194 6.

319

CONTENTS

Bom.

Legal Department File No. O.Munis./City/46.

Sr. No.	R.I./O. No.	Subject	Pages
		Opinions under the City of Bombay Municipal Act 1888.	
		Sec. 380.	
1	O. No.3516 11-5-46.	Question is how the hawkers w whose licenses have not been reviewed can be evicted from the Esplanade Maidan.	1-2
2	O.No.224,confl./ 18/546.	Proposal to appoint the City Engineer Mr. Nadak as officiating Municipal Commissioner during the absence of Mr. Mirchandani, Question whether it would be legally necessary for Mr. Nadak to take leave of absence from his appointment as city - Engineer in order to be able to take up the officiating appointment.	3-4
		secs.61,62,62D,62E,63 and 188.	
3	O.No. 7418/ 30-10-46.	Question whether the Municipal Corporation Bombay can purchase the Tramways and bus service under Sec. 63 (k)	5-6
4	O.No. 8321/ 22-11-46.	Question whether in view of the provisions of cl.(a) of Sec. 91(a)(2) there is any legal objection to Govt. allowing the use of the centre position of the race course for the - purpose of growing vegetables.	7-10
5	O.No. 9331/ 21-12-46.	Question regarding title to the "Bhika Behram Well" and the land surrounding it forming part of the Marine Lines maidan.	11-12
6	O.No. 9377/ 23-12-46.	Question whether the buildings which are exclusively occupied for the charitable purpose are exempt from the general tax under section 143(1).	13-14

SSD.
12.7.56.

Se.

1217

K.S.R.
12/7

Office of the R.L.A.

The question referred to the R.L.A. for consideration is how the hawkers whose licenses have not been renewed can be evicted from the Esplanade Maidan.

2. The view taken by the Commissioner of Police that the Police have no power to evict these hawkers is correct.

The Public Prosecutor has opined that these hawkers can be evicted either under section 380 or section 381 of the City of Bombay Municipal Act, 1888. Section 380 inter alia provides that if the Municipal Commissioner is of opinion that any hut or shed used either as a dwelling or as a stable or for any other purpose, is for any reason likely to endanger the public health or safety, he may by written notice etc. Require the owner or occupier thereof to remove or alter such hut. In his report to the Commissioner of Police the Superintendent of Police "A" Division has stated :

> "About 47 stall keepers occupy the place mentioned above. They use their stalls not only for the purpose of exhibiting their wares but also for residential purposes. Because of their insanitary habits and because of the lack of normal sanitary facilities in the vicinity they constitute a great source of nuisance to the public and are dangerous to the public health".

If the Municipal Commissioner agrees with the view expressed by the Superintendent of Police "A" Division and considered that the stalls erected by the hawkers are a source of danger to the public health, there appears no legal objection to his taking action under section 380 to evict the hawkers. Section 381 which empowers the Municipal Commissioner to order removal or abatement of nuisance will have little or no application to the present case of evicting the hawkers.

Since the hawkers' licenses are not renewed, they are in the position of trespassers liable to be evicted by the use of reasonable force. If the hawkers are adement, it may not be possible for Government to evict them save by due process of law. Consequently it would be safer to request the Municipal Commissioner to evict these hawkers under section 380 of the City of Bombay Municipal Act, 1888.

Id/- P.N.M.
9-5-56.
Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 3516, dated the 11th May 1946.
SSD,
11.7.56. 4c.

Office of the R.L.A.

The proposal is that Mr. N.V. Modak, the City Engineer, Bombay Municipal Corporation, should be appointed to officiate as Municipal Commissioner during the absence on leave of Mr. J. M. Mirchandani, the present Minicipal Commissioner.

The question raised for the consideration of the R.L.A. is whether it would be legally necessary for Mr. N.V. Modak, to take leave of absence from his appointment as City Engineer in order to be able to take up the officiating appointment of the Municipal Commissioner.

Sub-section (1) of section 74 of the City of Bombay Municipal Act, 1888, provides that the Corporation shall appoint fit persons to be municipal City Engineer, Municipal Executive Health Officer and Municipal Hydraulic Engineer. Under sub-section (2) of this section each of the said officers has to be appointed for a renewal term of five years, and has to devote his whole time and attention to the duties of his office.

Mr. N.V. Modak was first appointed to the post of City Engineer in 1935 for a term of 5 years. His appointment was renewed in 1940 and again in 1945. These appointments were apparently made in the exercise of powers given to the Corporation by sub-sections (1) and (2) of section 74 of the Act. As under sub-section (2) of section 74 of the Act a City Engineer has to devote his whole time and attention to the duties of his office, Mr. N.V. M odak cannot be appointed to officiate as the Municipal Commissioner in addition to his own duties.. To enable him to take up the officiating appointment of the Municipal Commissioner, the only alternative seems to be to allow him to take leave of absence from his appointment as City Engineer.

Id/- P.N.M.
18-5-46.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 224-Confl., dated the 18th May 1946.

SSD.
11.7.56. 4c.

Office of the R.L.A.

Under section 118 of the City of Bombay Municipal Act, 1888 the moneys from time to time credited to the municipal fund shall be applied in payment of all sums, charges and costs necessary for the purposes specified in sections 61, 62, 62D, 62E and 63 or for otherwise carrying the Act into effect, or of which the payment shall be duly directed or sanctioned under any of the provisions of the Act, inclusive of expenses mentioned in clauses (a) and (c) to (f). Section 63 provides that the Corporation may, in their discretion provide from time to time, either wholly or partly for all or any of the matters specified in clauses (b) to (l). Under clause (k) of section 63 the Corporation may provide for any measure not hereinbefore specifically named, likely to promote public safety, health, convenience or instruction. The running of tramway and bus services and supplying of electric energy would obviously promote public convenience. Therefore the Corporation would, it seems be competent to run such services under clause (k) of section 63.

Section 87 of the Act provides that the Corporation shall for the purposes of this Act, have power to acquire and hold moveable and immoveable property whether within or without the limits of the city. In view of the provisions of this section and clause (k) of section 63 it would, it appears be competent to the Corporation to purchase the combined undertaking of the B.E.S.T. It may further be noted here that it is open to the Corporation to purchase the tramway even under the powers conferred by section 30 of the Bombay Tramway Act,, 1874.

Id/- P.N.M.
30-6-46.

Remembrancer of Legal Affairs.

U.R. to G.D. No. 7418, dated the 30th October 1946.

SSD.
11.7.56. 4c.

Office of the H.L.A.

At its meeting held on 20th January 1944, the Municipal Corporation of the City of Bombay accorded sanction for leasing to the Royal Western India Turf Club, Ltd., the reclaimed land at Mahalaxmi Race Course measuring 10,22,806 square yards for a period of thirty years, on the terms and conditions specified in the letter from the Municipal Commissioner No. S.R. 1456, dated 19-2-1944, and moved the Government under clause (b) of sub-section (2) of section 91A of the City of Bombay Municipal Act, 1888, to accord its sanction to the letting of the said land on lease for a period of 30 years with effect from 1st July 1944 on the terms and conditions mentioned in the Municipal Commissioner's letter referred to By G.R., G.D., No. 252/33, dated 29-3-1944, Government accorded its sanction under clause (b) of sub-section (2) of section 91A of the City of Bombay Municipal Act, 1888, to the letting by the Municipal Coroporation of the City of Bombay to the Western India Turf Club, Bombay, of the land comprising the ex-Trust land specified as Plot 1 (j) in Shhedule W to the said Act, on lease for a term of 30 years from 1st June 1944, on the terms and conditions mentioned in the aforesaid leeter of the Municipal Commissioner.

In his letter No. Impts/EA/128, dated 8-10-1946, the Municipal Commissioner, states that as in view of the acute food shortage, the Secretary of the Royal Western India Turf Club applied for permission to utilise such portion of the centre of the race course as may be available for growing vegetables, the corporation at its meeting held on 27-8-1946 gave sanction subject to the approval of the Provincial Government under Section 91A (2) (b) of City of Bombay Municipal Act, to use the land for growing vegetables for a period of three years subject to the conditions mentioned therein.

The question for Remembrancer of Legal Affairs' consideration is whether in view of the provisions of clause (b) of sub-section (2) of section 91A of the City of Bombay Municipal Act, 1888, there is any legal objection to Government allowing the use of the centre of the land specified as plot 1 (j) in Schedule W to the Act, and used as a race course, for the purpose of growing vegetables.

Under sub-section (1) of section 91A of the City of Bombay Municipal Act, 1888,, from the date on which the City of Bombay Municipal (Amendment) Act, 1933, comes into operation, there shall vest or revest in the corporation, as the case may be, subject to all charges and liabilities affecting the same, to be held by the corporation for the purposes of this Act, subject to any restriction and conditions contained in the City of Bombay Municipal (Amendment) Act, 1933, all the immoveable property and all other interests and rights of the Board of Trustees for the Improvement of the City of Bombay constituted under the City of Bombay Improvement Trust Transfer Act, 1925, including all the estate, right, title and interest of the said Board in and to the lands specified in Schedule W and Schedule X and in the reclaimed lands specified in Schedule Y and shown on the deposited plans. Clause (b) of sub-section (2) provides that the lands specified in Schedule W and as plot 1(j) shall, subject as aforesaid (that is, subject to the power of resumption reserved by subsection (8)) be permanently appropriated as an open space, but such appropriation shall not preclude the corporation from letting the said lands from time to time on lease for a term not exceeding one year, or with the previous sanction of the Provincial Government and on such conditions as may be approved by the Provincial Government for a term not exceeding thirty years, for the purpose of a race course of for any prupose of public recreation or amusement.

Government has already accorded sanction as required by clause (b) of sub-section (2) of section 91A to the letting of plot 1(j) specified in Schedule W to the Royal Western India Turf Club, Bombay, on lease for a term of thirty years from 1-6-1944, on the terms and conditions mentioned in the letter from the Municipal Commissioner No. S.R. 14561, dated 19-2-1944 (see G.R. G.D. No. 252/33, dated 29-3-1944). Condition 4 of the conditions of the lease restricts the user of the land for the purpose of racing and things incidental thereto and for no other purpose. Condition 9 inter alia provides that "the land lying inside the race course shall likewise be open to the public except on race days and shall be laid out as playing fields according to the plan approved by the municipal Commissioner and maintained as such by the Turf Club.

As growing vegetables could be said to be neither incidental to racing nor conducive to public recreation or amusement conditions 4 and 9 of the lease and the Provisions of clause (b) of sub-section (2) of section 91A of the City of Bombay Municipal Act, 1888, would it seems preclude the grant of permission applied for by the Turf Club.

Id/- P.N.V.
20-11-46.

Remembrancer Of Legal Affairs.

U.R. to G.L., No. 8321, dated the 22nd November 1946.

SSD.
11.7.56. 4c.

R.I. No. 10104/14/11/1946.

Submitted.

2. This relates to the question of title to the "Bhika Behram Well" and the lands surrounding it forming part of the Marine Lines maidan, In his opinion No. - 6594, dated the 16th November 1935 the R.L.A. held that the well in dispute vests in the Corporation but the surrending land would vest in Government. In his opinion No. 333, dated 17th Januray 1936 the R.L.A. held that no action was called for in the letter of the Trustees' Solicitors (in P.W.D. file 9323/27-II-pp. 95-96) and if the Trustees filed the threatened suit steps should be taken to defend the suit. The Trustees have since claimed ownership of the well and the land measuring it (vide Municipal Commissioner's letter at pp. 49-50 ante) The Ex. Engineer, Presy. Division, now wants to know Government views with regard to the claim of the Trustees for communication to the Municipal Commissioner. P.W.D. states that the Government have repudiated the claim of the Trustees and in view of the decision already taken by Govt. the S.E. may be informed that Government has nothing more to add to what has already been dicided by them. The papers were shown to the Solicitor to Government in L.D. for remarks. The Solicitor has however transferred the papers to A Branch for disposal by the R.L.A.

" Seen and returned "

Id/- D.V.V.

Remembrancer Of Legal Affairs.

Office of the R. L. A.

U.R. to P.W.D. No. 9331, dated the 21-12-46.

SSD.
1157-56. 4c.

Office of the R.L.A.

Clause (d) of sub-section (2) of section 143 of the City of Bombay Municipal Act, 1888 and clause (b) ~~xxx~~ in the Explanation to section 23 of the Bombay Finance Act, 1932 being similar in terms cannot be differently - construed. But in my opinion the interpretation put upon clause (d) of sub-section (2) of section 143 of the City of Bombay Municipal Act, by the Municipal Solicitors does not appear to be sound. Under that Provision buildings and lands in respect of which rent is derived, whether such rent is or is not applied exclusively to religious or charitable purposes, are not exempt from the general tax although they are exclusively occupied for public worship or for charitable purposes within the meaning of clause (a) of sub-section (1). 'Derived' apparently means derived by the person who is primarily liable to pay the general tax. Under sub-section (3) of section 146 the tenant who has taken the land on lease and has built upon it is primarly liable to pay the general tax levied upon such land and buildings. In the present case the Gokhale Education Society has taken the land on lease and constructed a building thereon. Evidently the land and the building are used for an educational purpose i.e. for a charitable purpose within the meaning of clause (a) of sub-section (1) of section 143. The society does not drive any rent from the land and building. Consequently it appears that the land and building are deemed to be exclusively occupied for a charitable purpose and therefore exempt from the general tax under section 148 (1)

~~xxxxxxxxxx~~

Id/- D.V.V.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 9377, dated the 23rd December 1946.

SSD.
11,7.56. 4c.